

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

In re: CHICAGO TRANSIT )  
AUTHORITY STAFF, ) OEIG Case #12-00314

OEIG FINAL REPORT (REDACTED)

Below is an amended final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this amended final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to CTA Chairman Terry Peterson.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

**FINAL REPORT**

**I. ALLEGATIONS AND SUMMARY**

On March 12, 2012, the Office of Executive Inspector General (OEIG) received a complaint alleging that Chicago Transit Authority (CTA) rail employee (Switchman) [Employee 1] was retaliated against after he filed a complaint against his supervisor. The OEIG investigated the allegation and determined that it was unfounded.

During the course of its investigation, however, the OEIG discovered that certain employees from the CTA Red Line's 95<sup>th</sup> Street Rail Yard failed to follow established CTA safety procedures designed to protect passengers from the dangers associated with the rail yard.<sup>1</sup>

Specifically, the OEIG found that an unknown number of CTA employees failed to adequately perform their duties of ensuring that *all* CTA passengers were removed or exited CTA trains prior to the trains entering the 95<sup>th</sup> Street Rail Yard. In addition, OEIG investigators found that when CTA employees discovered passengers at the 95<sup>th</sup> Street Rail Yard, they did not always follow CTA safety procedures requiring them to report the incident. Rather, CTA employees who discovered a passenger at the rail yard referred to the passenger as a "package," rather than "passenger," and then failed to document the incident in order to avoid disciplinary action. Although the OEIG did not find that the failure to report the safety violations or describing CTA passengers as "packages" resulted in passenger harm, this investigation nevertheless revealed a culture in which CTA employees intentionally circumvented safety reporting rules to avoid being disciplined for failing to perform their duties.

## **II. BACKGROUND**

### **A. CTA's Rail Public Transportation System**

The CTA operates the nation's second largest public transportation system—a regional transit system that serves the City of Chicago and 40 neighboring communities.<sup>2</sup>

The CTA rail system has eight rapid transit routes and consists of 144 stations covering approximately 242.2 miles of track. Each of the eight routes is designated by a specific color: red, blue, green, brown, pink, purple, orange, and yellow.

### **B. The 95<sup>th</sup> Street Rail Yard and Employees Involved in the Operation of Trains**

The CTA's Red Line has two rail yards located near the 95<sup>th</sup> Street and Howard terminals. The 95<sup>th</sup> Street Rail Yard extends south of the 95<sup>th</sup> Street Terminal to about 100<sup>th</sup> Street.

The CTA's 95<sup>th</sup> Street Rail Yard has fourteen tracks that ultimately merge down to two tracks.<sup>3</sup> The tracks lead from the rail platform to one of three areas: the maintenance shop, a storage area where trains are "laid up" or held until needed, or an area where trains remain on a longer wait period because of maintenance issues.<sup>4</sup>

---

<sup>1</sup> Rail yards are CTA property where rail employees maintain, repair, store, or prepare designated trains. The rail yards are off limits to unauthorized individuals, including CTA passengers.

<sup>2</sup> "Our Services," [http://www.transitchicago.com/riding\\_cta/service\\_overview.aspx](http://www.transitchicago.com/riding_cta/service_overview.aspx) (last visited December 15, 2014).

<sup>3</sup> See Interview of CTA [Manager 1].

<sup>4</sup> *Id.*

Based on CTA position descriptions, the OEIG learned that various rail employees play a significant role in the day-to-day operations of each CTA rail line, including the Red Line. The following chart sets forth and explains the positions most relevant to this investigation:

<u>Position</u>	<u>Position Description</u>
<b><i>Transportation Managers I and II:</i></b>	Transportation Managers I and II (TMI and TMII) oversee general operations of the trains and facilities, including rail yards. TMIs are generally responsible for supervising Yardmasters, Operators, and Switchmen, and imposing discipline. TMII's are responsible for overseeing rail line operations and managing the TMIs and other staff.
<b><i>Yardmasters:</i></b>	Yardmasters control all train movement from the terminal to the rail yards, including out of service trains. <sup>5</sup>
<b><i>Switchmen:</i></b>	Switchmen operate out of service trains by driving them from the terminal into the rail yard and vice-versa. Prior to Switchmen moving any train, they must obtain clearance from the Yardmaster.

During the course of this investigation, numerous 95<sup>th</sup> Street Rail Yard employees relevant to this investigation either changed positions at the CTA or retired from the CTA. For purposes of clarity, however, in this Final Report these individuals will generally be identified by the titles they held at the time of the incident underlying the initial complaint, which, as described below, occurred on February 24, 2012. Footnotes will identify the individuals whose positions changed.

### C. CTA Rules and Procedures Regarding Passenger Safety

The CTA advises members of the general public to stay clear of train tracks, citing fast-moving trains and 600-volt electrified rails.<sup>6</sup> The CTA enacted rules and regulations relating to passenger safety that require CTA employees to report *all* safety violations. Some of those provisions are listed below:

<u>Rules</u>	<u>Rule Language</u>
<b><i>CTA Rail System Rule Book – Rule 11.3.2:</i></b>	“Switchmen must not permit unauthorized persons in the [rail] yards.”
<b><i>Standard Operating Procedures, Publication No. 8203:</i></b>	To prevent unauthorized persons from entering rail yards, Switchmen must “check [] all cars of trains to be laid up to ensure that no [passengers] remain on board.”

***CTA General Rule Book*** – CTA employees are required to follow “[a]ll rules, orders, bulletins,

<sup>5</sup> “Out of service” trains refer to trains on inactive status that are not carrying any passengers.

<sup>6</sup> “Safety & Security,” <http://www.transitchicago.com/safety/> (last visited December 16, 2014).

**Rule 7:** and instructions.” “Ignorance of the rules, orders, bulletins, and instructions will not be accepted as an excuse for failure to comply.”

**CTA General Rule Book –** “[E]mployees who discover a condition which imperils welfare of

**Rule 8:** passengers . . . must correct it if it is possible to do so and, in any case, promptly report the condition to their immediate supervisor . . . .”

**CTA General Rule Book –** “Complete and accurate written reports must be made for every

**Rule 17(a):** accident, disturbance, ejection, incident, or other unusual occurrence which involves the [CTA]. These reports must be made on proper forms before completion of the day’s work. Employees must not falsify any reports.”

**CTA Safety Rule Book –** “Employees are responsible to follow all safety rules, procedures,

**Rule 40<sup>7</sup>:** policies and adhere to safe work practices to avoid injuries. Prompt notification of the employee’s supervisor or manager shall occur for any of the following reasons: (a) An unsafe condition [and] (d) Any unsafe practice.”

When CTA employees are involved in an accident, disturbance, ejection, incident, or other unusual occurrence at the CTA, they are supposed to document these events on forms such as a “Report to Manager.” The Report to Manager is a form on which employees handwrite:

- a summary of facts regarding the incident;
- a description of what occurred, where, and when it happened;
- who else witnessed the incident; and
- other relevant information.

The supervisor in charge at the time of an incident completes, by hand, a “Supervisor’s Report,” which is a form on which the supervisor summarizes the incident and provides other relevant details. The supervisor then submits the Supervisor’s Report and all relevant Reports to Manager to CTA upper management.

CTA upper management then reviews the relevant reports and, if necessary, imposes discipline on the CTA employees at fault. CTA employees are generally subject to progressive discipline for violating CTA rules and policies, including safety rules. Progressive discipline generally includes written warnings, suspensions, and then discharge.

### **III. INVESTIGATION**

#### **A. Investigation into [Employee 1’s] Retaliation Claim**

---

<sup>7</sup> This was Rule 40 until January 2013, when it became Rule 41 in the updated Safety Rule Book. In this Final Report, it will continue to be referred to as Rule 40, because that was the number at the time of the underlying incidents (February 2012).

As noted above, [Employee 1] alleged that [Yardmaster 1] <sup>8</sup> retaliated against him.<sup>9</sup> The investigation into this allegation revealed the following:

**1. The February 1, 2012 Incident – Alleged Protected Activity:  
[Employee 1] Completes and Submits a Report to Manager**

On February 1, 2012, [Employee 1] completed and submitted a Report to Manager because [Yardmaster 1] verbally “reprimanded” him for failing to lay-up a train that [Employee 1] believed he should not have had to lay-up.<sup>10</sup>

During an OEIG interview, [Employee 1] told investigators that he filed this report because it appeared that [Yardmaster 1] assigned him the additional train in order to favor another Switchman.

**2. The February 24, 2012 Incident – Alleged Retaliatory Activity:  
[Yardmaster 1] Reports [Employee 1] to Upper Management**

**a. Summary of the February 24, 2012 Incident**

In his OEIG interview, [Employee 1] stated that on February 24, 2012, [Yardmaster 1] retaliated against him (for filing the February 1, 2012 Report to Manager referenced above) after he ([Employee 1]) discovered a passenger on the train that he had laid up in the rail yard. According to [Employee 1], he should not have been disciplined for the February 24, 2012 discovery of a passenger on the train he had laid up in the rail yard.

When asked to describe what had occurred, [Employee 1] told OEIG investigators that on February 24, 2012, the following occurred:

- [Yardmaster 1] directed CTA Switchmen [Employee 2] and [Employee 3] to inspect a train for passengers and both confirmed the train was clear (*i.e.*, that there were no passengers on the train).
- [Yardmaster 1] subsequently gave him clearance to drive the train into the rail yard.
- After driving the train into the rail yard and parking it, he walked through the train and discovered a CTA passenger sleeping in one of the rail cars.
- He then radioed [Yardmaster 1], informing him that he found a “package.”<sup>11</sup>

---

<sup>8</sup> [Yardmaster 1] retired from the CTA in [REDACTED].

<sup>9</sup> [Redacted].

<sup>10</sup> “Lay-up” is a term CTA uses to describe when trains are “taken out of road service” (removed from transporting passengers) and are driven to the rail yard. *CTA Rail System Rule Book – Rule 1.1.8.*

<sup>11</sup> As will be described further below, investigators discovered that CTA employees used the term “package” to refer to passengers, so as to conceal the discovery of a passenger in the rail yard from upper management.

- [Yardmaster 1] gave him clearance to bring the train back to the last platform so that the passenger could exit the train.
- [Yardmaster 1] then reported to upper management that he ([Employee 1]) discovered a passenger on the train that he had just laid up in the rail yard.
- [Manager 2] directed him to complete a Report to Manager about the incident.<sup>12</sup>
- [Manager 2] scheduled a hearing for 3:00 p.m. that same day about the incident and left a voicemail with him about the hearing. He, however, called back and said he would not return to work until that following Monday, February 27, 2012.
- Because he failed to return to CTA on that day for the scheduled hearing, [Manager 2] charged him with failing to follow orders in addition to allowing a passenger in the rail yard.

[Employee 1] told OEIG investigators that, because of these charges, he received a written warning about a safety violation for allowing a passenger to remain on a train into the rail yard, had to attend a recertification class, and lost one day's pay.

**b. [Employee 1] Believed He Should Not be Disciplined Because he Used the "Package" Procedure**

During an interview with the OEIG, [Employee 1] explained that [Yardmaster 1] retaliated against him (on February 24, 2012) by alerting upper management that he had allowed a CTA passenger to remain on a train that was taken into the rail yard, even though he described the passenger as a "package" over the radio. According to [Employee 1], the word "package" is used to describe an unauthorized passenger on a CTA train in the rail yard. [Employee 1] explained that Yardmasters understand the "package" term's usage and immediately give Switchmen clearance to return the train back to the platform so that the passenger ("package") may safely exit the train.

The OEIG will hereinafter refer to the use of the word "package" when describing the discovery of a passenger on a train in the rail yard as an invocation of the so-called "package" procedure.

According to [Employee 1], Switchmen and Yardmasters use the "package" procedure to prevent upper management from overhearing on the radio that a CTA passenger entered the rail yard. [Employee 1] stated that the term "package" creates ambiguity so upper management is unsure whether a Switchman found a tangible object or an actual passenger.<sup>13</sup> [Employee 1] explained that Switchmen and Yardmasters *do not* complete any reports about the incident or go through the disciplinary process when they employ the "package" procedure.

---

<sup>12</sup> [Employee 1] did complete a Report to Manager on that day. The OEIG's review of [Employee 1's] Report to Manager revealed that he did not mention in the report that he used the "package" procedure during this incident. Rather, this was information OEIG investigators obtained from [Employee 1] during his OEIG interview.

<sup>13</sup> [Yardmaster 2] said upper management can access the radio frequency Yardmasters/Switchmen use.

### **3. [Employee 1] Filed a Grievance about the February 24, 2012 Incident, Claiming Retaliation and Disparate Treatment**

Immediately after [Employee 1's] hearing relating to the discovery of a passenger on the CTA train at the rail yard, he filed a grievance. [Employee 1] argued that, on February 24, 2012, [Yardmaster 1] assigned [Employee 2] and [Employee 3] the task of checking the train for passengers. [Employee 1] stated that he should not have been held responsible for failing to clear the train of all passengers because it was supposed to be checked by [Employee 2] and [Employee 3].

In this grievance, [Employee 1] also stated that [Employee 2] committed the same violation (laid up a train in the rail yard with a passenger on it) one to two weeks prior to his incident but that [Employee 2] was not disciplined for the incident.<sup>14</sup> In his grievance, [Employee 1] thus concluded that "management[']s" use of "selective discipline" against him was in retaliation for his February 1, 2012 Report to Manager regarding [Yardmaster 1].

During his OEIG interview, [Employee 1] reiterated that [Yardmaster 1] retaliated against him (on February 24, 2012) for filing the February 1, 2012 Report to Manager. [Employee 1] explained that evidence of retaliation was that, after he filed the February 1, 2012 report, [Yardmaster 1] began to closely scrutinize everything he ([Employee 1]) did and reported him for the February 24, 2012 "package" incident even though [Yardmaster 1] did not report [Employee 2] for a similar "package" incident during the same time period.

In his OEIG interview, however, [Employee 1] admitted that he was unsure if [Yardmaster 1] was aware of the February 1, 2012 Report to Manager. [Employee 1] also acknowledged to the OEIG that CTA policy required upper management receive notification when safety violations occur and that employees could be disciplined if passengers were left on trains going into the rail yard. According to [Employee 1], because of his grievance, the written warning from the safety violation was removed from his record but he did not receive back pay for the day of lost wages.

### **4. Interview of CTA [Yardmaster 1] and Use of the "Package" Procedure**

On June 28, 2012, the OEIG interviewed [Yardmaster 1].<sup>15</sup> [Yardmaster 1] had worked at the CTA for approximately 26 years, including as a Yardmaster for approximately 21 years. He indicated that, as Yardmaster, he was responsible for preparing trains, moving them throughout the rail yard, and overseeing the Switchmen on duty.

[Yardmaster 1] said that he recalled the February 24, 2012 incident in which [Employee 1] radioed him about the "package." According to [Yardmaster 1], he was in the office with CTA [Employee 4] at the time of the radio call and overheard [Employee 1's] use of the term

---

<sup>14</sup> [Employee 1] admitted he did not witness [Employee 2's] violation; rather, he heard about it from another Switchman.

<sup>15</sup> As noted above, [Yardmaster 1] retired from the CTA in [REDACTED].

“package.” [Yardmaster 1] said he knew this term referenced the discovery of an unauthorized passenger in the rail yard and said he felt he had no choice but to report the incident, despite [Employee 1’s] invocation of the so-called “package” procedure, because if he did not report it, he would have been in trouble himself.<sup>16</sup>

[Yardmaster 1] indicated that [Employee 1] was correct in his Report to Manager when he stated that [Employee 3] and [Employee 2] were responsible for inspecting the trains for passengers. [Yardmaster 1] said that he thought [Employee 5] knew that [Employee 3] and [Employee 2] were responsible when he alerted [Employee 5] about the incident; however, during his conversation with him, [Employee 5] only asked who laid up the train, which was [Employee 1].<sup>17</sup> [Yardmaster 1] told investigators that he had no issue with [Employee 1] and considered him a good employee.

## **5. Interview of [Employee 2] and “Package” Procedure**

On September 5, 2012, investigators interviewed [Employee 2], who has worked at the CTA for approximately 29 years. He stated one of his duties was inspecting out of service trains for passengers, which he performed by either walking through the train or simply looking through the windows from the outside.

Because [Employee 1] previously indicated that [Employee 2] was not disciplined for committing the same safety violation, the OEIG asked him about the prior incident. [Employee 2] stated that [Manager 1] <sup>18</sup> did discipline him for bringing a CTA passenger into the rail yard in February 2012.<sup>19</sup> [Employee 2] explained that [Yardmaster 1] assigned another Switchman the task of inspecting his train that day and said that, after laying up the train in the rail yard, other Switchmen reported that a “package” was on his train. [Employee 2] was unable to recall which Switchmen used the “package” term. He stated that he did not complete any reports for the incident at the time, even though he knew a Report to Manager was required. He explained that the only reason to write a report would be if a manager *found out about* an incident.

### **B. OEIG’s Investigation into the “Package” Procedure**

After discovering that some CTA Switchmen and Yardmasters at the 95<sup>th</sup> Street Rail Yard relied on the “package” procedure to evade disciplinary action and prevent senior managers from becoming aware that passengers were discovered on CTA trains in the rail yard, the OEIG expanded its investigation. The OEIG sought to determine the frequency that employees used the “package” procedure and how widespread the practice was.

Although the OEIG limited its focus to the Red Line, particularly the 95<sup>th</sup> Street Rail Yard, during this investigation, the OEIG did interview [Supervisor 1]. According to

---

<sup>16</sup> In her OEIG interview, [Employee 4] said she could not recall the February 24, 2012 incident involving [Yardmaster 1] and [Employee 1]. [Employee 4] also denied any knowledge of the “package” procedure. [Employee 4] later became a Rail Instructor II with the CTA.

<sup>17</sup> Although [Employee 5] was a TMI during the February 24, 2012 incident, he later became a TMII.

<sup>18</sup> [Manager 1] was a TMII at the time of the February 24, 2012 incident, but he is now the [REDACTED].

<sup>19</sup> Although the incident occurred in February 2012, [Employee 2] was not disciplined until March 2012.



[Supervisor 1], *all* Switchmen use the “package” procedure and new Switchmen learn this procedure from veteran Switchmen. [Supervisor 1] indicated that most members of upper management are aware of the “package” procedure because they were former Switchmen. In addition, in his second interview, [Employee 1] said that he knew the “package” procedure was also used on the Brown, Orange, and Green Lines because he previously worked on those lines and heard the term used in the same manner.

**1. Procedures for Addressing Incidents when Passengers are Discovered on Trains in the Rail Yard**

The OEIG learned of two methods for responding when Switchmen discover a passenger in the rail yard: the proper procedure and the unsanctioned, so-called “package” procedure:

**a. The Proper Procedure When Passengers are Discovered in the CTA Rail Yard**

Based on interviews with Switchmen, Yardmasters, and TMs, as well as a review of CTA policies,<sup>20</sup> the OEIG learned that the proper procedure to follow after Switchmen discover an unattended passenger on a CTA train in the rail yard is the following:

- the Switchman who discovers a passenger in the rail yard must notify the Yardmaster;
- the Yardmaster authorizes the Switchman to drive the train back to the platform;
- the Switchman drives the train back to the platform and allows the passenger to exit;<sup>21</sup>
- the Switchman completes a Report to Manager detailing the incident;
- the Yardmaster on duty completes a Supervisor’s Report detailing the incident; and
- the Yardmaster submits the reports to the TMI on duty.

After reviewing the above-referenced reports and obtaining the relevant information, a TMI or TMII imposes discipline, if necessary, and includes all of these reports with a “Special Occurrence Report.” Special Occurrence Reports summarize the facts of the incident and detail any actions a TMI or TMII took in response to the incident, including, for example, interviewing the relevant witnesses, holding hearings, and taking any disciplinary action against the Switchmen found to have failed to execute their duties.

**b. The Unofficial “Package” Procedure When Passengers are Discovered in the CTA Rail Yard**

---

<sup>20</sup> See e.g., CTA General Rule Book – Rules 8 and 17(a) and CTA Safety Rule 40.

<sup>21</sup> During his interview, [Manager 1] said two Switchmen should be on the train: one stays with the unauthorized passenger while the other drives the train back to the platform. No other employee mentioned this requirement.

Based on interviews with [Employee 1], [Yardmaster 1], and others, the OEIG learned that, at the 95<sup>th</sup> Street Rail Yard and likely other CTA lines, Switchmen and Yardmasters relied on an unsanctioned “package” procedure. This procedure often replaced the proper procedure for reporting when a CTA train carrying an unauthorized passenger entered the rail yard. They described the so-called “package” procedure as follows:

- the Switchman finding the unauthorized passenger in the rail yard notifies the Yardmaster that a “package” was found;
- the Yardmaster, knowing that the term “package” means passenger, authorizes the Switchman to drive the train back to the last platform so that the passenger can exit; and
- neither the Switchman nor Yardmaster document the incident or inform upper management about the incident.

By following the unsanctioned “package” procedure, CTA employees who fail to adequately perform their duty to make certain that all passengers were removed or exit a train before it is taken into the rail yard avoid any discipline.

## **2. Documentation of Incidents where Unauthorized Passengers were Discovered in the CTA Rail Yard - Special Occurrence Reports**

In an effort to determine the frequency that unauthorized passengers were discovered in the rail yard on trains, the OEIG requested all Special Occurrence Reports involving 95<sup>th</sup> Street Rail Yard personnel, from January 2011 through April 2012, for incidents where a Switchman was charged with a safety violation for improperly taking a train into a rail yard with an unauthorized passenger. In response, the CTA produced four Special Occurrence Reports, one of which was the February 24, 2012 incident involving [Employee 1].<sup>22</sup> None of the Special Occurrence Reports mention the “package” procedure.

Because successful execution of the “package” procedure would result in upper management receiving no reports, the OEIG acknowledges that the use of the unsanctioned “package” procedure likely contributed to the low number of Special Occurrence Reports received for this period. As a result, the OEIG found it impossible to determine exactly how often Switchmen discovered an unauthorized passenger in the rail yard.

## **3. [Employee 4], who Trained Switchmen how to Inspect Trains for Passengers, Denied Any Knowledge that CTA Passengers have been Discovered in the Rail Yard**

On November 8, 2012, investigators interviewed [Employee 4]. [Employee 4] has worked at the CTA for approximately 24 years.

---

<sup>22</sup> [Redacted]

[Employee 4] stated that Switchmen obtain safety training at their initial hire and every two years during recertification training. [Employee 4] indicated that she did not know if there were any specific policies explaining or describing how Switchmen are to clear trains of passengers before moving them to rail yards; however, *she stated that she instructs Switchmen to walk inside a train from one end to the other.* Once the train is laid up, the Switchman who drove it must conduct another walk-through.

[Employee 4] said she was unaware of Switchmen ever driving a train into the rail yard with passengers on it. [Employee 4] stated that management has never referred a Switchman to her for retraining because of a failure to clear a train properly. [Employee 4] stated that she had never heard of the “package” procedure or the term “package” being used to describe a passenger.

#### **4. Interview Statements about the Frequency at which Passengers were Discovered on a CTA Train in the Rail Yard**

During its investigation, the OEIG asked witnesses how often Switchmen discovered unauthorized passengers aboard CTA trains that were laid up into the rail yard. Below are the varied responses that the CTA witnesses provided to investigators:

<u>CTA Employee</u>	<u>Interview Response</u>
[Manager 1]:	4-5 times per year
[Employee 5]:	“It ain’t that common”
[Yardmaster 1]:	Sometimes but not often
[Yardmaster 2]:	1 time per month
[Yardmaster 3]:	May only occur a few times a month
[Employee 2]:	1 time every 6 months
[Employee 3]:	“[M]ay have” heard of an incident a few years ago
[Employee 1] [1 <sup>st</sup> Interview]:	“[C]ould be” 1 time per week
[Employee 1] [2 <sup>nd</sup> Interview]:	He can’t really give a number because it is hit or miss but it “happens all the time”

Further details from interviews of each of the aforementioned witnesses are described below.

#### **5. Interviews of TMs**

##### **a. [Manager 1] Stated that Yardmasters and Switchmen Know of their Responsibilities to Ensure CTA Passengers are not Taken into the Rail Yard and to Report Such Incidents**

On April 19, 2012, investigators interviewed [Manager 1]. [Manager 1] has worked for the CTA for approximately 26 years. [Manager 1] acknowledged that a safety violation occurs if a Switchman fails to ensure a train is cleared of all passengers and an unauthorized passenger is later discovered in the rail yard aboard a CTA train.

Referring to Rule 11.3.2 of the CTA Rule Book, [Manager 1] indicated that Switchmen are aware of their responsibility to ensure that passengers do not enter the rail yard on a train. [Manager 1] stated that Yardmasters must report *all* safety violations and that failure to report a safety violation is a violation in and of itself. [Manager 1] said he was unaware of any Yardmasters failing to report safety violations, but did indicate that unauthorized passengers were discovered on CTA trains in the rail yard about four to five times per year.

**b. [Employee 5] Denied any Knowledge of the Term “Package”**

On June 19, 2012, investigators interviewed [Employee 5], who has worked for the CTA for approximately 26 years. When investigators asked [Employee 5] if he ever heard of the term “package” being used to describe a passenger who was discovered on a train laid up in the rail yard, [Employee 5] responded, “I can’t say that I have.” He suggested that, because TMs generally communicated on a different radio frequency than the Yardmasters and Switchmen, they would be unable to hear communications between the Yardmasters and Switchmen.<sup>23</sup> [Employee 5] also said that reports must be completed if a passenger is discovered on a train in the rail yard. According to [Employee 5], “it ain’t that common” that unauthorized passengers are discovered in the rail yard.

**6. Interviews of Yardmasters**

**a. [Yardmaster 1] Described the “Package” Procedure as the Usual Procedure at the 95<sup>th</sup> Street Rail Yard**

During his June 28, 2012 interview, [Yardmaster 1] indicated that the procedure for inspecting trains for passengers at the 95<sup>th</sup> Street Rail Yard differed from other yards. Specifically, he explained that, while other yards required the Switchman driving a train into the yard to inspect it, the 95<sup>th</sup> Street Rail Yard designated certain Switchmen to clear a train before another Switchman drove it to the yard.

[Yardmaster 1] indicated that, if a Switchman discovered a passenger aboard a train in the rail yard quickly and safely, *the usual procedure* was for the Switchman to alert the Yardmaster that he found a “package” and to obtain clearance to bring the train back to the platform so the passenger could exit. He explained that *neither he nor the Switchman generally wrote reports* pursuant to this procedure.<sup>24</sup>

During his interview, [Yardmaster 1] recalled two recent instances in which a Switchman discovered a passenger in the rail yard and brought him/her back to the platform. [Yardmaster 1] said that, although he had no authority to impose discipline, if he were in charge, he would give only “a slap on the wrist” to a Switchman if the passenger was uninjured because there was “no harm, no foul.” He admitted that upper management “feels stronger than [he does].” He also said, however, that he would act differently if a passenger physically left the train in the rail yard. [Yardmaster 1] stated he had not referred a Switchman for discipline because he had not met

---

<sup>23</sup> On the other hand, [Employee 1] and [Yardmaster 2] both said that TMs could access the frequency used by Yardmasters and Switchmen.

<sup>24</sup> As noted above, this was the “package” procedure.

anyone who was a “total screw-up.” He said he preferred to maintain a stress-free rail yard and avoid confrontation. According to [Yardmaster 1], unauthorized passengers were “sometimes but not often” discovered in the rail yard.

**b. [Yardmaster 2’s] Acknowledgment of Incidents in which Switchmen Discover Passengers in the Rail Yard and Do Not Submit Reports**

On October 16, 2012, investigators interviewed [Yardmaster 2], who has worked for the CTA for approximately 28 years and has served as a Yardmaster since [REDACTED]. He has been a Yardmaster at the [REDACTED] Rail Yard for a portion of that time.

[Yardmaster 2] explained that the CTA does not want passengers to go into the rail yard because it is very dangerous. [Yardmaster 2] stated that Switchmen are responsible for checking the trains from front to back to make sure that no passengers are present before taking the trains into the rail yard. [Yardmaster 2] nonetheless confirmed that Switchmen have driven trains with unauthorized passengers into the rail yard.

When asked if he ever heard of Switchmen referring to an unauthorized CTA passenger in the rail yard as a “package,” [Yardmaster 2] responded, “No, I haven’t heard that” and indicated that the “only package that I know about is when we’re getting a package from the shop, you know, from another yard . . . .” Although he denied having any knowledge of the “package” procedure, [Yardmaster 2] stated that he has known instances in the past where a *passenger was discovered* in the rail yard without incident and *no one* wrote the required reports. [Yardmaster 2] stated that, “I’ve known that to happen without anybody saying anything.” He then clarified his statement, however, by stating, “It hasn’t happened on [his] shift.” According to [Yardmaster 2], unauthorized passengers were discovered in the rail yard about once per month.

**c. [Yardmaster 3] stated that Switchmen Discovered CTA Passengers in the Rail Yard “a Few Times a Month” and She was Aware of the Use of the “Package” Procedure**

On May 15, 2012, the OEIG interviewed [Yardmaster 3], who has worked for the CTA for about 24 years, including as a Yardmaster at the [REDACTED] Rail Yard.

[Yardmaster 3] told investigators that she was aware that Switchmen and Yardmasters used the term “package” to refer to an unauthorized passenger in the rail yard in order *to avoid notifying* upper management about the incident. [Yardmaster 3] stated that she was aware of instances where Switchmen brought trains into rail yards and later discovered that passengers remained on the trains, noting that this occurred “a few times a month.”

**7. Interviews of Switchmen**

**a. [Employee 2] Acknowledged that He was Aware of the “Package” Procedure**

During his OEIG interview, [Employee 2] acknowledged that Switchmen refer to unauthorized passengers discovered on CTA trains after the last stop as “packages” *to avoid disciplinary action*. Although he denied ever using the term himself, he acknowledged that other Switchmen used the “package” procedure at the 95<sup>th</sup> Street Rail Yard, as occurred during his incident in February 2012, detailed above. [Employee 2] also said that he believed that the “package” procedure was used at other yards. Nevertheless, he said he could not identify which Switchmen and which rail yards engaged in the “package” procedure. According to [Employee 2], unauthorized passengers were discovered in the rail yard once every six months.

**b. [Employee 3] “May Have” Heard of the “Package” Procedure**

On September 5, 2012, investigators interviewed [Employee 3], who has worked as a Switchman for approximately 28 years. When asked if he heard of Switchmen referring to unauthorized passengers as “packages,” [Employee 3] responded that he “may have” heard of that; however, he stated that he never used the “package” term. He acknowledged that allowing a passenger to remain on a train that entered the rail yard is a safety violation and confirmed that a Report to Manager must be completed when unauthorized CTA passengers are discovered in the rail yard on a train.

**c. During His First OEIG Interview, [Employee 1] Acknowledged that the “Package” Procedure had been the Common Practice for over 25 years**

On March 30, 2012, the OEIG first interviewed [Employee 1], who stated that the “package” procedure was a common practice, and confirmed that he had personally used this procedure, as detailed above. He indicated that *this procedure began before he started working for the CTA over 25 years ago*. [Employee 1] acknowledged, however, that CTA policy required upper management to be notified about all safety violations and these violations could result in disciplinary action. [Employee 1] also stated that, although Switchmen discovered passengers on trains in the rail yard about once a week, it was very uncommon for the Switchman at fault to receive discipline.

**d. During His Second OEIG interview, [Employee 1] Described Remedial Measures that [Manager 1] Took**

On April 18, 2013, the OEIG conducted a second interview with [Employee 1] who confirmed that every Switchman at the 95<sup>th</sup> Street Rail Yard has specific duties. [Employee 1] stated that he is not required to walk through the train on his own before driving it into the rail yard; rather, other Switchmen assigned to clear trains are responsible for that task. [Employee 1] said that, nevertheless, since the February 24, 2012 incident, he conducts his own inspection for passengers before he moves any train into the rail yard to ensure other Switchmen tasked with clearing passengers did not fail to do their job.

[Employee 1] indicated that, around mid-March 2012, [Manager 1] conducted an in-person meeting with the Switchmen, informing them that they must inspect trains by walking through the train and not just peering through the windows. According to [Employee 1], [Manager 1] did not issue any official documents regarding this matter. [Employee 1] further stated that, since that time, the number of passengers discovered in the rail yard has decreased.

In regards to whether Switchmen were disciplined when passengers were taken into the rail yard after using the “package” procedure, [Employee 1] stated that it was “hit or miss” depending on the Yardmaster. He recalled an incident occurring one week after his previous interview (in early April 2012) where he discovered a passenger asleep on a train in the rail yard prior to his shift starting. [Employee 1] radioed [Yardmaster 2] and informed him that he found a “package.” [Employee 1] indicated that, although he referred to the passenger as a “package,” he still wrote a Report to Manager, which resulted in upper management disciplining the Switchman at fault. [Employee 1] stated that, since February 2012, he is not aware of anyone else who used the “package” procedure and successfully evaded disciplinary action. Nevertheless, he also stated that Switchmen still discovered passengers on trains in the rail yard “all the time.”

#### **IV. ANALYSIS**

##### **A. [Yardmaster 1] Did Not Retaliate Against [Employee 1] for Previously Submitting a Report to Manager**

The Metropolitan Transit Authority Act (MTAA) prohibits the CTA from disciplining an employee who discloses information that “a reasonable individual believes concerns the following: (1) a violation of any law, rule, or regulation; or (2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”<sup>25</sup>

[Employee 1] alleged that [Yardmaster 1] retaliated against him on February 24, 2012 because he had filed a Report to Manager regarding [Yardmaster 1] on February 1, 2012. In his February 1, 2012 Report to Manager, [Employee 1] alleged that [Yardmaster 1] showed favoritism towards another Switchman. The reason [Employee 1] was subject to discipline regarding the February 24, 2012 incident, however, was that he failed to ensure all passengers exited the train before he brought it into the rail yard and because he failed to follow a supervisor’s orders. There is no real dispute that failing to ensure all passengers are off a train before bringing it into the rail yard is a safety violation warranting discipline. What [Employee 1] actually sought, via his retaliation claim, was the opportunity to bypass the disciplinary process because he used the unsanctioned “package” procedure, something the MTAA does not protect.

CTA policies are clear: CTA employees must follow CTA’s safety policies; doing so is mandatory, not retaliatory. [Employee 1’s] reliance on his use of the “package” procedure to avoid discipline is irrelevant. After the February 24, 2012 incident, [Yardmaster 1] only had two choices: follow CTA policy and report what had occurred that day or continue the improper

---

<sup>25</sup> 70 ILCS 3605/49(a). *See also* CTA Ordinance No. 004-161, Sec. 2(a)(1)-(2).

practice of covering-up safety violations even though [Employee 1] did use the “package” procedure. By reporting the February 24, 2012 incident, [Yardmaster 1] chose to follow CTA policy and that is in no way retaliatory conduct.

Accordingly, the allegation that [Yardmaster 1] retaliated against [Employee 1] is **UNFOUNDED**.

**B. Numerous Known and Unknown CTA Employees Failed to Report Certain Safety Violations in Order to Avoid Discipline**

The expansion of the OEIG’s investigation beyond the initial retaliation allegation resulted in the OEIG discovering an unsanctioned practice evidently known and used by many Switchmen, Yardmasters, and TMs at the CTA. According to multiple witnesses, the so-called “package” procedure had been a longstanding practice used at the CTA Red Line and other CTA rail lines. However, regardless of the existence of this long-standing practice, or for that matter other long-standing practices, longevity of misconduct does not morph what is otherwise inappropriate activity into appropriate activity. Such perverse logic would result in the protection of inappropriate or unsanctioned employment procedures simply because of successful employee concealment.

In any event, at least one other witness, [Yardmaster 2], said that even though he had not specifically heard of the “package” terminology, he had known instances where a passenger was discovered in the rail yard and no one wrote the required reports. Thus, regardless of the terminology, at least during the period relevant to this investigation, it was apparent that multiple employees believed it was acceptable to cover up incidents that could have put passengers in danger in order to avoid disciplinary action.

**1. Safety Concerns and Safety-Related Training Procedures**

Multiple witnesses spoke to the inherent dangers of allowing unauthorized persons, including passengers, into CTA rail yards. The number of 600-volt electrified rails, the close proximity of multiple different tracks merging into a few, and the variation in the speed, direction, and frequency of CTA trains all combine to make the rail yard a dangerous place for inexperienced people. In short, it is not safe for passengers to be unattended in the rail yards.

In recognition of these facts, CTA policy strictly limits access to rail yards. In fact, the CTA’s various rule books and Standard Operating Procedures contain multiple employee rules relating to passenger safety. For example, CTA policy requires employees to check all train cars before they are laid up in the rail yard in order to ensure that no passengers remain on board. The manner in which trains were checked for passengers seemed to vary – some Switchmen said that they merely walked alongside the train and looked in windows. Nevertheless, at least one CTA trainer, [Employee 4], instructed Switchmen to walk through the inside of the train from one end to the other. The intention was clear, sensible, and unequivocal: no passengers were to remain on the train before driving it into the yard.

**2. The “Package” Procedure is Contrary to Multiple CTA Safety Rules**



There is no dispute that CTA policy required Switchmen and Yardmasters to document and submit “accurate written reports” for every incident that “imperils [the] welfare of passengers,” even if a passenger suffered no actual injuries.<sup>26</sup> The “package” procedure did not supplement CTA policy; rather, CTA employees improperly used the procedure to violate CTA policy in order to circumvent the disciplinary process.

At least five CTA employees interviewed by the OEIG acknowledged the existence of the “package” procedure. Although their responses varied as to the frequency that unauthorized passengers were discovered in the rail yard, the fact is that even one time is one too many. Because of the serious dangers associated with the rail yard, it is the responsibility of CTA rail employees to protect passengers from exposure to these dangers. Instead, the “package” procedure was born of an environment that is less concerned with passenger safety and more concerned about protecting rail employees from justifiable disciplinary action. This is unacceptable.

Yardmasters, Switchmen, and others who allowed the “package” procedure to flourish over the years failed to execute their responsibilities in accordance with CTA policy. It is irrelevant if [Yardmaster 1] and others considered upper management’s position to be too strong. Disagreement over policy does not justify actions that blatantly violate the policy, especially when the safety of the riding public is at stake. Even though several other CTA employees interviewed by the OEIG denied any knowledge of the “package” procedure, the OEIG believes that the apparent prevalence of the “package” procedure makes it very unlikely that anyone who had previously worked as a Switchman or Yardmaster would have no knowledge of this unsanctioned practice.

### **3. The “Package” Procedure Hid Violations of CTA Policy**

The CTA rules and policies outlined in this report clearly reflect that CTA rightfully believes that unauthorized passengers should not be brought into the rail yard and this belief makes perfect sense. The rail yard poses significant dangers. These policies also rightly reflect that CTA, as an agency, understands the need to document these types of instances. Pursuant to CTA policy, Switchmen who fail to clear trains of *all* CTA passengers prior to bringing the train into the rail yard must be held accountable for their actions in order to deter this behavior. Nevertheless, at least during the relevant times of this investigation, use of the “package” procedure by numerous employees prevented the CTA, as an agency, from identifying employees who failed in their duties and from taking action to deter these types of inactions.

In any event, at this time, the OEIG is not making findings against specific individuals regarding this matter because it was nearly impossible for the OEIG to obtain sufficient specific information to determine exactly who engaged in this behavior or how often.<sup>27</sup> There can be no dispute that there was a problem of CTA employees underreporting the incidence of passengers

---

<sup>26</sup> CTA General Rule Book – Rules 8 and 17(a).

<sup>27</sup> The OEIG could have made a finding against [Yardmaster 1] for failing to report all safety violations committed by employees under his supervision, based on his own admission, but, because he is no longer at CTA, it would be irrelevant to do so.

riding CTA trains into rail yards so as to avoid being disciplined for failing to locate passengers before taking the train into the yard. Moreover, although the OEIG received four relevant Special Occurrence Reports for the period of January 2011 to April 2012, the OEIG concludes that this number *does not* accurately portray the actual number of instances in which Switchmen failed to ensure all passengers exited trains before they were brought into the rail yard. Switchmen at the 95<sup>th</sup> Street Rail Yard estimated that passengers rode into rail yards on CTA trains between once each week and once every six months, and oftentimes, no formal reports were made. Indeed, one indication of the frequency of this problem is that this investigation began with a dispute over the handling of two separate instances (one involving [Employee 2] and one involving [Employee 1]) of unauthorized passengers entering one CTA rail yard in a single month, February of 2012. Successful execution of the “package” procedure results in no reports being submitted to upper management and consequently, prevents the OEIG from concluding exactly how often this practice occurred or how widespread it was at that time.

Finally, the OEIG acknowledges that mitigating circumstances exist in this matter and that CTA management is now likely aware of the circumstances surrounding the “package” procedure. In addition, there is also some indication that [Manager 1] may have taken some actions to deter this behavior (at least with his employees) after the OEIG interviewed him, all of which we conclude were wholly appropriate. Nevertheless, if CTA employees are still using the “package” procedure today, CTA upper management must take measures to end it.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

Following due investigation, the OEIG issues these finding:

- **UNFOUNDED** – [Yardmaster 1] did not retaliate against [Employee 1].
- **FOUNDED** – Numerous known and unknown CTA employees failed to report certain safety violations in order to avoid discipline.

Although the report focuses on the CTA Red Line, the investigative evidence reveals that the “package” procedure was likely used throughout the CTA. Accordingly, the OEIG recommends that the CTA:

- (1) remind *all* CTA rail employees to follow any and all safety protocols;
- (2) train *all* CTA rail employees to walk through the trains to check them for passengers before they are laid up;
- (3) document and inform *all* rail employees about a prohibition against use of the “package” procedure or other unsanctioned practices that may exist; and
- (4) ensure that *all* rail employees understand their duties, such as whose duty it is to check trains before laying them up.

Date: December 23, 2014

Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
69 W. Washington Street, Suite 3400  
Chicago, IL 60601

**Ajay Alexander**  
Assistant Inspector General #159

**Julie Africk**  
Investigator # 126



RECEIVED  
MAY 12 2015

EXECUTIVE  
ETHICS COMMISSION

**TO:** Office of Executive Inspector General

**FROM:** Hal Woods, Senior Project Consultant, Administration

**DATE:** May 5, 2015

**RE:** OEIG Investigation No. 12-0314 –FINAL REPORT  
RESPONSE REQUIRED

The above-referenced final report involves allegations that various “known and unknown” CTA employees intentionally failed to report certain safety violations in order to avoid facing disciplinary action. In particular, the OEIG alleges that CTA employees violated safety rules by leaving a passenger on a train that was laid up in the yard and then intentionally covered up that violation by referring to the passenger as a “package” in order to avoid documenting the incident and receiving discipline. In its report, the OEIG labels this practice the “package” procedure and concludes that it is a longstanding practice that is purportedly widespread among CTA rail employees.

In March 2012, the OEIG received a complaint from CTA rail employee [redacted], alleging that he was retaliated against in February 2012 after he filed a complaint against his supervisor. After interviewing [redacted] the OEIG determined that his allegations of retaliation were unfounded. During the OEIG’s interview of [redacted] however, he made statements about the use of the “package” procedure, and the OEIG concluded that a separate OEIG investigation was warranted. [redacted] initially stated that the “package” procedure was “standard procedure” at the CTA. The OEIG, therefore, launched the separate investigation to determine the frequency that Switchmen and Yardmasters used the “package” procedure to avoid discipline.

Between April 2012 and April 2013, the OEIG interviewed ten other CTA employees about the alleged “package” procedure. The employee responses to questions regarding CTA employee practices varied greatly and the ten interviews failed to provide any consistent information regarding the alleged “package” procedure from which any valid conclusion could be drawn. Even [redacted] seemed uncertain about his initial assessment, later stating that he did not really know how often CTA employees used the “package” procedure.

Despite the fact that the OEIG acknowledges that the information it collected is inconsistent and unverified, the OEIG nonetheless concludes that there is a widespread practice of CTA employees underreporting the incidences of passengers being left on trains and that this practice was born of a “an environment that is less concerned with passenger safety and more concerned about protecting rail employees from justifiable

disciplinary action.” According to the OEIG, this practice was allowed to “flourish over the years” and resulted in “a culture in which CTA employees intentionally circumvent safety rules to avoid being disciplined for failing to perform their duties.” Finally, the OEIG concludes that “it is very unlikely that anyone who had previously worked as a Switchman or Yardmaster would have no knowledge of this unsanctioned practice.” Notwithstanding the inflammatory language and generalized and unsupported allegations of wrongdoing, the OEIG does not identify a single CTA employee who should be disciplined as a result of its investigation.

The OEIG defends its lack of direct evidence of the use of the alleged “package” procedure by claiming that “successful execution of the ‘package’ procedure results in no reports being submitted to upper management” and this “prevents” the OEIG from determining how often the practice is used. The CTA contends that the absence of formal reports does not, in and of itself, warrant presenting as thorough and complete what amounts to a preliminary and exploratory investigation.

#### **CTA Response to the OEIG’s Findings Regarding Widespread Employee Practices and the Broader Environment and Culture at the CTA**

CTA considers the conclusions that the OEIG draws about the CTA’s current broader safety culture to be unsupportable and therefore unjustified in light of the small number of interviews conducted, the inconsistent information about the use of the “package” procedure uncovered in those interviews, and the nearly three years that have passed since the events at issue in the investigation occurred.

As the OEIG itself acknowledges in the report before reaching these broad conclusions, it is unaware of the extent of the practice and is unable to conclude “exactly how often this practice occurred or how widespread it was at that time.” As a result, CTA finds the OEIG’s conclusions about authority-wide practice and culture to be unsubstantiated and, therefore, a misleading assessment of CTA’s current practices.

The CTA is committed to providing the highest degree of safety for its customers, employees, and the public. Safety is a central management priority and all CTA departments coordinate to develop and implement informed and targeted safety policies throughout the authority. A key component of the CTA’s safety management program is the monitoring and support of its nearly 10,000 frontline employees through observations, training, audits, interviews, and instruction.

As a result, the CTA values the information that the OEIG’s report provides about the employee interviews which were conducted in 2012 and 2013. As it is the established and ongoing practice of CTA management to investigate any safety concerns, the OEIG’s interviews serve to contribute useful information to CTA’s existing safety management program.

#### **CTA Response to OEIG Recommendations to Remind, Train and Inform All CTA Rail Employees About Their Duties and the Prohibition of Unsanctioned Practices**

CTA rail employees are informed, reminded, and trained about required safety practices on an ongoing basis. CTA's Safety Department and the Learning and Support Unit collaborate to provide rail employees with regular reminders and trainings on safe practices. Upon hiring, Switchmen and Yardmasters undergo extensive training which instructs all rail employees on adherence to the entire Rail System Rule Book, Safety Rules, Rail Safety Training, and other policies and procedures. Additionally, rail employees are monitored and observed by their supervisors on a regular and frequent basis.

CTA's commitment to safety is further demonstrated through its frequent involvement in external safety examinations and audits of its system. Currently, the CTA is a volunteer participant in a pilot program with the Federal Transportation Administration for the implementation of safety management systems (SMS). A central component of this program is the development of policies which further encourage frontline employees to report safety concerns, and the overall program builds upon CTA's existing robust safety program. The Regional Transportation Authority, in its capacity as State Safety Oversight Agency, also regularly conducts safety audits of the CTA's system, provides detailed reports on its observations, and coordinates responsive safety initiatives with the CTA.

As a result of CTA's engagement in these safety examinations and audits, information about CTA employee conduct is constantly collected and analyzed by the Safety Department and management throughout the Authority. In response, CTA management ensures that rail employees are regularly reminded and informed about safety policies and any relevant prohibited practices through department meetings, bulletins, and trainings. CTA is confident that the OEIG's recommendations are satisfied by these collective activities which are conducted pursuant to its ongoing safety management program.

Regardless, due to its unwavering commitment to the safety of its customers and employees, CTA will use the information provided to examine the issue and determine whether additional measures are necessary. CTA agrees with the OEIG that all unsafe employee behavior should be promptly addressed and eliminated. In order to effectively address any safety concern, however, it is critical for CTA to obtain accurate and timely information about suspected safety issues, including the true nature and extent of any alleged unsanctioned employee behavior. The OEIG's report relies on unsubstantiated anecdotal information from sources of questionable veracity. In response, the Rail Operations and Safety Departments will examine the issue and obtain a more fully informed perspective based on verifiable data in order to determine if the practices described in the allegation currently exist and, if so, to address any discovered actions and their potential safety implications promptly and appropriately.

cc: Doug Kucia  
David Kowalski  
George Cavelle  
Ronald Ester  
Dwayne Lane



**TO:** Executive Ethics Commission

**FROM:** Robert L. Smith  
Chief Operating Officer

**DATE:** April 11, 2016

**RE:** Release of redacted OEIG report #12-0314

*Below is the CTA's response to the Executive Ethics Commission's (EEC) February 17, 2016 correspondence regarding the EEC's consideration of the publication of OEIG Report #12-0314. The CTA requests that this response be made public if the report is published. Additionally, the CTA requests that its May 5, 2015 response to the OEIG be published in conjunction with this response if the report is published. For the reasons cited below, the CTA requests that no portion of this statement be interpreted as a demonstration of the CTA's acknowledgment that OEIG Report #12-0314 is indeed a "founded" report.*

The CTA unequivocally supports the EEC's mission to ensure transparency and accountability in government. The publication of OEIG reports that are the product of thorough investigations and which provide accurate information to the public about findings of misconduct are an effective means to achieve those objectives. OEIG Report #12-0314, however, is not such a report and achieves no such ends.

The Illinois Administrative Code ("Illinois Code") reflects the sentiment that a thorough investigation which results in an accurate identification of misconduct (i.e., a "founded" report) is a prerequisite to public release.<sup>1</sup> This is for good reason: the codification of this principle protects government agencies and their employees from the destructive consequences that result from the publication of reports predicated on inadequate investigations, baseless allegations, claims of illusory wrongdoing, or any combination thereof.

Since no instances of fraud, waste, abuse, mismanagement, misconduct, or violations of the Illinois State Officials and Employees Ethics Act ("State Ethics Act") were uncovered by the OEIG's investigation or identified in OEIG Report

---

<sup>1</sup> Illinois Administrative Code Section 1620.1020 *Release of Summary Reports*.

#12-0314 (hereinafter “final report”), it is not a “founded” report.<sup>2</sup> As a result, its publication would not only countervail the OEIG’s statutory purpose but also contradict the requirements of the Illinois Code.<sup>3</sup>

The final report discusses a single employee (Employee #1) who did, in fact, attempt to cover up a safety violation in order to avoid discipline. However, as a direct result of the actions taken by CTA management, that attempt was unsuccessful. Significantly, CTA management did in fact *discipline Employee #1 for the safety violation he attempted to cover up*. It is this discipline, which occurred prior to the OEIG’s involvement, that is at the root of the retaliation claim which prompted the OEIG’s initial investigation.

**Report #12-0314 is unfounded because it is not based on direct evidence.**

The OEIG’s investigation into the alleged practice began four years ago, in March 2012, when it expanded its investigation to determine whether CTA employees were engaged in an alleged practice to cover up the mistake of having a passenger remain on a train as it goes into a yard. Over the three years that followed, the OEIG interviewed a total of *eleven* of the CTA’s nearly 10,000 employees about the alleged practice. The statements conveyed to the OEIG during these interviews – though inconsistent, unsubstantiated, and provided in response to unclear questioning by the OEIG – serve as the sole basis for the final report. The final report selectively affords disproportionate weight to the responses of certain interviewees while discounting the testimony of others; significantly, nearly half of the interviewees either professed no knowledge of the alleged practice or stated that it did not occur.

A clear and simple fact remains; beneath the final report’s incendiary language and accusations of wide-reaching misconduct lies no actual evidence of unaddressed wrongdoing by a CTA employee. In its May 2015 response to the OEIG, the CTA discussed these evidentiary inadequacies in detail and it adopts the May 2015 response in its entirety as part of this document.

---

<sup>2</sup> A “founded report” includes a finding of a violation of the Ethics Act or other law, rule, or policy. The report’s perplexing attempt to include a “founded” finding despite the absence of any identified, specific wrongdoing is most aptly demonstrated by the blatantly ambiguous language of the final report’s “founded” finding in which no employee is named: the final report states that “[n]umerous known and unknown CTA employees failed to report safety violations in order to avoid discipline,” but no one is specifically identified as a wrongdoer. (Final Report p. 18)

<sup>3</sup> Predictably, since the OEIG did not identify any instances of actual misconduct, the final report does not include all of the information that the Illinois Code expressly requires of founded reports. Section 1620.1000(a) of the Illinois Code addresses *Investigation Reports Finding a Violation* and states that a founded report shall include nine elements. Notably, three of these required elements call for specific information regarding the allegation and findings: “a description of any alleged misconduct discovered in the course of the investigation,” “the last known mailing addresses for all subjects,” and “[t]he date of the last alleged violation of the Act or other State law, rule or policy giving rise to the investigation.” Not one of these elements is included in the final report.



Ironically, contrary to the claims in the final report, the OEIG uncovered evidence of *the success of the CTA's safety practices*. Notably, as referenced above, this investigation was not prompted by the reporting of an allegation to the OEIG that unsafe practices were ongoing and unaddressed at the CTA. Rather, the OEIG's involvement began in response to an allegation by an employee (Employee #1) that he was retaliated against when CTA management *disciplined* him for the safety violation at issue.

After being ordered to attend safety training as a result of the incident, Employee #1 protested his discipline by initially claiming in his interview with the OEIG that the misconduct for which he was disciplined was a common and permitted practice.<sup>4</sup> Despite Employee #1's questionable motives for alleging that the practice was widely used, the OEIG nevertheless investigated his accusations regarding this alleged "practice" in an investigation that spanned three years. Significantly, instead of uncovering widespread, unaddressed usage of the "practice," the OEIG learned of just two instances of it occurring. In both cases, CTA management identified and addressed the safety violations in a timely and effective manner prior to the OEIG's initiation of its investigation.<sup>5</sup> Further, in his second interview with the OEIG, Employee #1 provided a much different description to the OEIG and reported (contrary to statements he made in his first interview) that he did not really know how often employees engaged in the alleged practice.<sup>6</sup>

Faced with the proposition of being unable to name *a single CTA employee* who should be disciplined as a result of its three-year investigation,<sup>7</sup> the OEIG has

---

<sup>4</sup> See Final Report Section IV.A.

<sup>5</sup> The two instances referenced here are the discipline that both Employees #1 and #2 received for incidents that occurred in February 2012. (Final Report p. 6-8)

<sup>6</sup> See OEIG's second interview with Employee #1.

<sup>7</sup> Footnote #27 of the final report alleges that "[t]he OEIG could have made a finding" against a specific Yardmaster (#1) interviewed by the OEIG "for failing to report all safety violations committed by employees under his supervision, based on his own admission, but, because he is no longer at CTA, it would be irrelevant to do so." As a preliminary matter, this claim is puzzling because the OEIG has, on several other occasions, made findings against employees no longer employed by the agency where they were found to have committed a violation. (See e.g. published OEIG Reports #12-2148, #12-2216, #11-1495, #11-0428, #10-1308.) Even more to the point, this is an inaccurate representation of Yardmaster #1's statements to the OEIG. While Yardmaster #1 stated that he "recalls" two instances "where a passenger was brought into the yard and returned to the platform safely," he *does not* "admit" that he saw these instances and "failed to report" a safety violation as the OEIG states. To the contrary, he describes in detail how he *did report* an instance of the safety violation at issue – in fact, Yardmaster #1 was responsible for reporting the safety violation that led to the discipline of the employee at the center of the OEIG's investigation (Employee #1). (See OEIG's interview of Yardmaster #1). This misrepresentation is notable because it is indicative of an even larger problem with the OEIG's questioning and subsequent analysis which is discussed in detail in Footnote #13. For the reasons listed there, it is reasonable, based on the imprecise manner in which the OEIG posed its questions – that Yardmaster #1 was referring to something he may have *heard about* but had not actually been *involved with* or even *witnessed* firsthand. Therefore, it is not clear how the OEIG concluded that it "could have" made a finding against him.

chosen instead, by way of the title of this final report, to cast blame on *all CTA employees*. This conclusion is unfounded and highly misleading. Its broad brush whitewashes the utter absence of evidence to support this final report. The OEIG has besmirched the reputation of thousands of hardworking public transit employees and, at the same time, has failed to provide accurate information to the public about alleged misconduct.

**The publication of an unfounded report would discredit the reputation of thousands of CTA employees.**

In addition to contravening the EEC's mission of transparency and accountability by misinforming the public, the public release of this final report would have other negative impacts. The publication of this unfounded final report would unfairly discredit the work of thousands of CTA employees by falsely conveying to the public not only that the safety issue described in the report exists, but also that the "prevalence" of the issue demonstrates that CTA employees have allowed the alleged practice to "flourish over the years."<sup>8</sup>

If such a culture existed at the CTA in which employees intentionally circumvent safety rules in order to avoid discipline, as the OEIG concludes, then examples of these occurrences would be in ample supply. Here, not a single one is identified. If the EEC elects to publish this final report, thereby endorsing it as a founded report, then the OEIG's indictment of all CTA employees would be validated. How can so harshly impugning the character and the work of so many people be justified without any evidence to support it?

Even though the sweeping tones with which the OEIG presents its conclusions are demonstrably undermined by its own acknowledgment in the report of the absence of direct evidence to support those conclusions,<sup>9</sup> the public release of such inflammatory "findings" would falsely and unfairly damage the reputation of every CTA employee.

**The publication of an unfounded report would set a precedent that allows the OEIG to issue reports based on no direct evidence.**

To formulate and publish a report based on no direct evidence as "founded" violates the purpose and intent of Illinois law, misleads the public, and results in a lack of trust and confidence in the agencies under the OEIG's jurisdiction. Investigations, notwithstanding their longevity, sometimes yield no firm conclusions, and conclusions should not be manufactured just so the ends justify the means. Publishing such a report would also appear to be a departure from

---

<sup>8</sup> Final Report p.17.

<sup>9</sup> On page 17 of the Final Report, the OEIG states that it "is not making findings against specific individuals regarding this matter because it was nearly impossible for the OEIG to obtain sufficient specific information to determine exactly who engaged in this behavior or how often."

past practice by dramatically lowering the publication standards the EEC has applied thus far.<sup>10</sup>

The OEIG's conclusions are directly and inherently contradicted by its own investigation because – while the “finding” purports to have identified evidence of extensive of misconduct – the final report explicitly recognizes and states that no actual evidence of wrongdoing was uncovered by the investigation. As such, the publishing and endorsement of this final report would grant the OEIG the authority to issue and seek publication of groundless reports against agencies and their employees which do not comply with the intent of the law on publication because they do not inform the public about findings of misconduct which are supported by credible evidence.

### **The CTA's subsequent actions**

Contrary to the claim in the report that it was “nearly impossible” to obtain “sufficient information to determine exactly who engaged in this behavior or how often,”<sup>11</sup> a proper investigation aimed at obtaining direct evidence was imminently attainable. However, the OEIG instead did nothing more than ask a mere handful of CTA employees if they may have ever “heard”<sup>12</sup> of something<sup>13</sup> - - and then attempted to justify its failure to properly investigate the allegations by claiming that an investigation was impossible.

The CTA's Department of Safety Risk Management conducted a compliance review of Standard Operating Procedure 8203: *Switchman Duties and Responsibilities* (“SOP 8203”) which involved observing switchmen, tracking rail car movements, and monitoring radio transmissions. The CTA found no incidences of the improper conduct alleged by the OEIG in the final report. Despite having uncovered no evidence to support the finding in the final report,

---

<sup>10</sup> A review of published OEIG Investigative Reports reveals that, for obvious reasons, the EEC *has never before* published an OEIG report which fails to identify any actual misconduct uncovered by the OEIG's investigation.

<sup>11</sup> Final Report p. 17-18.

<sup>12</sup> See the interview discussed in the Final Report p. 14, Section III.B(1)(b)7(b).

<sup>13</sup> Significantly, the responses provided by the interviewees to the OEIG reveal that the questions posed by the OEIG about the alleged unsafe practice do not appear to have been adequately targeted. This is most aptly demonstrated by the “varied responses” presented in Sections III.B (1)(b)(4) through (7) on pages 11-15 of the final report. Despite the straightforward manner in which they are portrayed in the final report, the responses listed on page 11 *were not* provided in response to the same question. Instead, the OEIG's interviews demonstrate that interviewees were asked a variety of questions including: (1) how often are passengers left on trains in general (Yardmaster #2), (2) how often are passengers left on trains (on a particular line) and someone is disciplined for it (Manager #1), (3) how often do people use the “package procedure” in order to avoid discipline (Employee #1). As is well understood by now, these are *categorically* different prompts. The imprecision that is evident in the line of questioning resulted in general confusion, the conflation of answers, and an obfuscation of the relevant issues. Most importantly, this produced a set of information upon which no clear conclusion can be drawn. However, the OEIG bases its *entire* finding on these answers.

the CTA has updated certain procedures implicated by the allegations in order to bolster their clarity and their degree of specificity. These improvements have been made as a part of CTA's ongoing commitment to the safety of its passengers.

cc: Michael McLaughlin  
Sylvia Garcia  
Reginald Mason